

E-Filed 3/2/07

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

JULIE SCOTT,

Plaintiff,

v.

UNUM LIFE INSURANCE COMPANY OF
AMERICA, et al.,

Defendants.

Case Number C 05-275 JF (PVT)

ORDER¹ (1) GRANTING IN PART
PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES, COSTS,
EXPENSES AND PREJUDGMENT
INTEREST; AND (2) DENYING
DEFENDANTS' MOTION FOR
ATTORNEYS' FEES AND COSTS

[re: doc. nos. 69, 74]

The parties have filed cross-motions for attorneys' fees, costs and expenses. Plaintiff additionally seeks prejudgment interest. The Court has considered the briefing as well as the oral arguments presented at the hearing on March 2, 2007. For the reasons discussed below, Plaintiff's motion will be granted in part, and Defendants' motion will be denied.

¹ This disposition is not designated for publication and may not be cited.

I. BACKGROUND

In this ERISA² action, Plaintiff Julie Scott (“Scott”) sued Defendants Unum Life Insurance Company of America (“Unum”) and Cisco Systems, Inc. Long-Term Disability Plan (“the LTD Plan”) for wrongful denial of long-term disability benefits under the LTD Plan. Scott asserted two claims: a claim for benefits under 29 U.S.C. § 1132(a)(1)(B) and a claim for injunctive relief under § 1132(a)(3). The Court granted Defendants’ motion for judgment on the pleadings as to the (a)(3) claim, and granted Defendant Unum’s motion for summary judgment as to the (a)(1)(B) claim on the ground that Unum was not a proper party to that claim. The Court granted summary judgment for Scott on her (a)(1)(B) claim against the LTD Plan, finding that Scott was entitled to benefits for the period covered by the “own occupation” definition and remanding for consideration of her entitlement to benefits for the period covered by the “any occupation” definition.

Scott seeks attorneys’ fees, costs, expenses and prejudgment interest. Defendants concede that Scott is entitled to an award of reasonable attorneys’ fees, but argue that her claim for fees is inflated, that she is not entitled to fees incurred in prosecuting her ultimately unsuccessful (a)(3) claim, and that she is not entitled to prejudgment interest. Defendants seek fees and costs with respect to their defense of Scott’s (a)(3) claim.

II. LEGAL STANDARD

ERISA provides that a “court in its discretion may allow a reasonable attorney’s fees and costs of action to either party.” 29 U.S.C. § 1132(g)(1). In general, a court considering whether to award attorney’s fees and costs under ERISA must consider five factors: (1) the degree of the opposing party’s culpability or bad faith; (2) the ability of the opposing party to satisfy an award of fees; (3) whether an award of fees would deter others from breaching duties under similar circumstances; (4) whether the party requesting fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA; and (5) the relative merits of the parties’ positions. *Hummell v. S.E. Rykoff & Co.*, 634 F.2d 446, 453

² Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.*

(9th Cir. 1980); *see also Landwehr v. DuPree*, 72 F.3d 726, 739 n.5 (9th Cir. 1995).

The Court has discretion to award prejudgment interest to an ERISA plaintiff. “Whether to award prejudgment interest to an ERISA plaintiff is a question of fairness, lying within the court's sound discretion, to be answered by balancing the equities.” *Landwehr*, 72 F.3d at 739 (internal citation and quotations omitted).

III. DISCUSSION

A. Defendants’ Motion For Attorneys’ Fees And Costs

Defendants seek \$29,307.51 in attorneys’ fees and costs related to their defense of Scott’s ultimately unsuccessful (a)(3) claim. “[T]he *Hummell* factors very frequently suggest that attorney’s fees should not be charged against ERISA plaintiffs.” *San Francisco Culinary, Bartenders and Service Employees Welfare Fund v. Lucin* 76 F.3d 295, 297 (9th Cir. 1996) (internal quotation marks and citations omitted). This case falls within that general rule. Although the Court granted judgment for Defendants on Scott’s (a)(3) claim, there is no indication in the record that the (a)(3) claim was frivolous or brought in bad faith (factor 1). Scott is an individual suffering from a long-term disability; satisfaction of the requested fee award likely would impose financial hardship upon her (factor 2). An award of fees against Scott might deter plaintiffs from suing under ERISA in the future, but that is not the type of deterrence the fee statute seeks to promote (factor 3). Defendants did not resolve any significant legal questions (factor 4). Scott prevailed on the bulk of her claims; thus the parties’ positions in this litigation do not favor an award of fees to Defendants (factor 5). Accordingly, Defendants’ motion will be denied.

B. Plaintiff’s Motion For Attorneys’ Fees, Costs, Expenses And Prejudgment Interest

Scott seeks \$96,236.50 in attorneys’ fees, \$1,631.61 in litigation costs and expenses, and an additional \$7,500 in attorneys’ fees for bringing the present motion, for a total award of \$105,368.11. She also seeks prejudgment interest.

The first three *Hummell* factors weigh in favor of a substantial attorneys’ fees award. The Court finds some degree of culpability on the part of the LTD Plan (factor 1). While the Court’s order of December 7, 2006, addressing the parties’ summary judgment motions, did not expressly

1 find bad faith on the part of the LTD Plan, the order did note the following: although Scott
2 became eligible for long-term disability benefits in July 2001, she was not even referred to
3 Unum's long-term disability department until April 2002, at which time Unum began a new
4 investigation into her claim (after previously awarding short term disability benefits); Unum did
5 not render a decision on Scott's long-term disability claim until January 2003, a year and a half
6 after Scott became eligible for long-term disability benefits; and then Unum denied Scott's claim
7 even though *all* of the doctors concluded that she was disabled, basing its denial upon a
8 functional capacity evaluation that was conducted by a person who was not a doctor and that did
9 not apply the proper "own occupation" standard of disability. Moreover, the LTD Plan clearly
10 can satisfy an award of attorneys' fees (factor 2). An award of fees might well deter the LTD
11 Plan from future excessive delays and sloppiness in evaluating benefits claims (factor 3).

12 Factors 4 and 5 support a modest reduction in the requested fee award. The claim on
13 which Scott prevailed was solely for her own benefit, not for the benefit of plan participants as a
14 whole (factor 4). Moreover, while Scott substantially prevailed in this action, she did not prevail
15 on her (a)(3) claim (factor 5). As discussed above, the Court is not inclined to award attorneys'
16 fees to Defendants based upon Scott's failure to prevail on the (a)(3) claim, but the Court will
17 consider this failure as one of the equities that should be balanced in arriving at an appropriate
18 fee award.

19 Defendants argue that additional reductions in the proposed award should be made
20 because Scott's attorneys' hourly rates are excessive and there was duplication of effort when
21 both a partner and an associate attended certain events. The Court concludes that the hourly rates
22 charged by Scott's attorneys are reasonable in light of their expertise in the area. The Court notes
23 that these attorneys' normal rates previously have been approved in other cases. The Court is not
24 persuaded that the attendance of both a partner and an associate at hearings necessarily
25 constitutes duplication of effort that justifies a reduction in fees. Accordingly, the Court will
26 award the substantial majority of the fees and costs requested, less an appropriate reduction to
27 reflect the parties' positions on the (a)(3) claim. Having examined the parties' briefs on this
28 latter issue, as well as the records submitted by Scott's counsel, the Court concludes that an

award of attorneys' fees, costs and expenses in the total amount of \$80,000 is fair and reasonable.

Defendants argue that an award in this amount would be unreasonable, given that only \$48,785 in benefits were at issue in this case. This argument is unpersuasive. The fact that Scott was required to incur more than \$100,000 in attorneys' fees was the result of Defendants' refusal to acknowledge that their denial of benefits was wrongful. Scott was entitled to benefits commencing in July 2001. It is now March 2007, and based upon the record before the Court, it appears that Scott *still* has not been paid the benefits to which she is entitled. Accordingly, the Court is untroubled by the fact that the award for fees and costs exceeds the benefits that Scott recovered in this action.

The Court also concludes that an award of prejudgment interest is appropriate given the lengthy delay in payment of benefits for which Scott became eligible in 2001. The Ninth Circuit has held that when an award of prejudgment interest is appropriate in ERISA cases, "the interest rate prescribed for post-judgment interest under 28 U.S.C. § 1961 is appropriate for fixing the rate of pre-judgment interest unless the trial judge finds, on substantial evidence, that the equities of that particular case require a different rate." *Grosz-Salomon v. Paul Revere Life Ins. Co.*, 237 F.3d 1154, 1164 (9th Cir. 2001). The Court is not persuaded that the equities in this case require a different rate, and so will award prejudgment interest with respect to the benefits at the federal rate set forth in 28 U.S.C. § 1961.

IV. ORDER

- (1) Plaintiff's motion is GRANTED IN PART AND DENIED IN PART. Plaintiff is awarded a total of \$80,000 in reasonable attorneys' fees, costs and expenses, plus prejudgment interest at the rate set forth in 28 U.S.C. § 1961; and
- (2) Defendants' motion is DENIED.

DATED: 3/2/07


 JEREMY FOGEL
 United States District Judge

1 This Order was served on the following persons:

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